

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

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ROY MORAGA,

Plaintiff,

v.

DR. ALLEY, *et al.*,

Defendants.

Case No. 3:19-cv-0635-MMD-CLB

**ORDER RE: JUDICIAL NOTICE
FOR FAILURE TO COMPLY
WITH COURT'S ORDERS**

[ECF No. 20/21]

Plaintiff Roy Moraga ("Moraga") filed a document entitled: "Judicial Notice for Failure to Comply with Court's Orders." (ECF No. 20/21.) Within this document Moraga requests many things, such as: 1) an order vacating the Early Mediation Conference; 2) deferral of the filing fee; 3) a jury trial setting; 4) a fine and/or reprimand levied against Doug Rands; 5) appointment of counsel; and 6) denial of summary judgment. (ECF No. 20/21.)

Although Moraga's notice contains the requests stated above, the notice is not a proper motion pursuant to LR 7-2(d) as it is not supported by any points and authorities. Nevertheless, the Court will address each of Moraga's requests below:

1. An Order Vacating the Early Mediation Conference

This request is **DENIED as moot**. The Early Mediation Conference was vacated in the Court's order ECF No. 19.

2. Deferral of the Filing Fee

This request is **DENIED**. Plaintiff was granted *in forma pauperis* status in the Court's order ECF No. 22 which will govern payment of the filing fee pursuant to 28 U.S.C. § 1915.

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1 **3. Jury Trial Setting**

2 This request is **DENIED**. A jury trial will not be set until such time as dispositive
3 motions are ruled upon.

4 **4. A Fine and/or Reprimand Levied Against Doug Rands**

5 This request is without merit and is **DENIED**.

6 **5. Appointment of Counsel**

7 This request is **DENIED**. A litigant in a civil rights action does not have a Sixth
8 Amendment right to appointed counsel. *Storseth v. Spellman*, 654 F.2d 1349, 1353 (9th
9 Cir. 1981). The Supreme Court has ruled that district courts lack authority to require
10 counsel to represent indigent prisoners in § 1983 cases. *Mallard v. U.S. Dist. Court for*
11 *the S. Dist. of Iowa*, 490 U.S. 296 (1989). In only “exceptional circumstances,” the court
12 may request voluntary assistance of counsel pursuant to 28 U.S.C. § 1915(e)(1). *Palmer*
13 *v. Valdez*, 560 F.3d 965, 970 (9th Cir. 2009). Without a reasonable method of securing
14 and compensating counsel, this court will seek volunteer counsel only in the most serious
15 and exceptional cases. A finding of such exceptional circumstances requires that the
16 court evaluate both the likelihood of success on the merits and the pro se litigant’s ability
17 to articulate his claims in light of the complexity of the legal issues involved. Neither factor
18 is controlling; both must be viewed together in making the finding. *Cano v. Taylor*, 739
19 F.3d 1214, 1218 (9th Cir. 2014). The court exercises discretion in making this finding.
20 *Id.* (citing *Palmer*, 560 F.3d at 970).

21 In the present case, the court does not find the required exceptional
22 circumstances. Even if it is assumed that plaintiff is not well versed in the law and that
23 he has made serious allegations which, if proved, would entitle him to relief, his case is
24 not exceptional. The court is faced with similar cases almost daily. The court will not enter
25 an order directing the appointment of counsel in this case. The plaintiff has demonstrated
26 that he is able to litigate this case on his own. He has filed a complaint and motions with
27 the court. The plaintiff may have the assistance of law clerks at the prison.
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This request is **DENIED**. A summary judgment motion has not been filed. At such time that a summary judgment motion is filed, Moraga will be afforded an opportunity to respond.


UNITED STATES MAGISTRATE JUDGE